

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**DAVID SMITH,**

**Plaintiff,**

**vs.**

**SARGENT TURNER, in their Individual  
capacities; CORPORAL BELL, in their  
Individual capacities; and DIANE  
SABATKA-RINE, Warden (N.S.P.),**

**Defendants.**

**4:13CV3041**

**ORDER**

This matter is before the court on the defendants' Motion for Leave to Depose Plaintiff (Filing No. 55). The defendants seek leave for the deposition pursuant to Fed. R. Civ. P. 30(a)(2)(B) because the plaintiff is incarcerated at the Nebraska State Penitentiary. The defendants state the plaintiff's deposition would provide testimony critical to ongoing discovery and the ultimate resolution of the lawsuit. The plaintiff did not oppose the motion. Under the circumstances, it appears such deposition is consistent with Fed. R. Civ. P. 26(b)(2).

In light of the deposition and recent denial of motions for summary judgment, the August 27, 2014, progression order (Filing No. 34) is vacated. The previously scheduled pretrial conference will be a telephone planning conference. The trial will be rescheduled. Upon consideration,

**IT IS ORDERED:**

1. The defendants' Motion for Leave to Depose Plaintiff (Filing No. 55) is granted.
2. The court will hold a telephone planning conference on **May 15, 2015, at 11:00 a.m.** The defendants' counsel shall contact the plaintiff's institution in advance and arrange to initiate and place the conference call.

Dated this 12th day of May, 2015.

BY THE COURT:  
s/ Thomas D. Thalken  
United States Magistrate Judge